



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 13.10.2025

Order pronounced on : 31.10.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJICRP.No.167 of 2025

1.M.S.Sampath
2.Shanthi Sampath
3.M.S.Srinath
4.Andal Srinath

... Petitioners

Vs.

1.M/s.Aston Constructions Private Limited,
by its Director Mr.Jithendra Bhandari,
Now at 484-485, Pantheon Plaza,
Egmore, Chennai – 600 008.

2.Rajan Babu

3.R.Lakshmi

4.The Tamil Nadu Generation & Distribution
Corporation Limited (TANGEDCO),
by its Chairman Mr.Rajesh Lakhani,
NPKRR Maligai, 114, Anna Salai,
Chennai – 600 002.

5.The Suprintending Engineer,
Chennai Development Circle,
TANGEDCO, A10, T.V.K.Industrial Estate,
Guindy, Chennai – 32.

6.The Assistant Engineer, T.N.E.B,



O/o JE / O & / Vandalur, Chennai – 48.

7.M/s.Serene Adinath Retirement Community
Apartment Owners Association,
by its Secretary Mr.Jayaraman,
283/1, Ramakrishnan Street,
Mannivakkam, Chennai – 4.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order and decretal order passed in I.A.No.3 of 2023 in O.S.No.259 of 2021 dated 30.03.2024 on the file of the District Munsif, Chengalpet.

For Petitioners : Mr.S.Vasudevan
for Mrs.D.Meera

For Respondents : Mr.Salai Varun for R1

Mr.S.T.Raja
Standing Counsel for RR4 to 6

No appearance for RR2, 3 & 7

ORDER

The plaintiffs in O.S.No.259 of 2021 before the District Munsif, Chengalpattu, aggrieved by the order passed in Section 8 application under the Arbitration and Conciliation Act, 1996, have filed the present revision petition.



2.I have heard Mr.S.Vasudevan, for Mrs.D.Meera, learned counsel for the petitioners and Mr.Salai Varun, learned counsel for the 1st respondent, Mr.S.T.Raja, learned Standing Counsel for the respondents 4 to 6.

3.The plaintiffs have filed a suit for declaration, to declare a registered gift deed dated 21.06.2021, executed by the Developer, the 4th defendant in favour of TANGEDCO, the 1st defendant, as null and void and for other reliefs. Pending the suit, the Developer, namely the 4th defendant took out an application under Section 8 of the Act, seeking the dispute to be referred to arbitration. The said application was resisted by the plaintiffs, but however, the trial Court allowed the application and referred the parties to arbitration and challenging the same, the present revision has been filed.

4.Mr.S.Vasudevan, learned counsel appearing for the petitioners would submit that the 1st respondent in the revision, that is the Developer, was a power of attorney agent of the original land owners and after sale of about 650 apartments and having exhausted the entire undivided share, the Developer was not competent to execute the gift deed in favour of the 1st defendant, TANGEDCO, especially when the apartment owners, numbering



as many as 650, have already come to own the entire land in form of undivided shares, proportionate to the extent of the built up area of the apartments purchased by them. He would further state that challenging the said gift deed executed in favour of the 1st defendant, the suit has been rightly filed and the reliefs sought for can only be tried before the competent Civil Court and it was not an arbitrable dispute.

5.The learned counsel for the petitioners would further state that the 1st defendant is not a party to the construction agreement between the petitioners and the Developer and when such third parties are involved, the Civil Court alone would have to try the disputes. In support of his contentions, he would place reliance on the decision of the Hon'ble Supreme Court in *Booz Allen and Hamilton Inc. Vs. SBI Home Finance Limited and others*, reported in 2011 (5) SCC 532 and *M.Mythrai and another Vs. T.Ramesh and others*, reported in CDJ 2021 MHC 201, for the proposition that the dispute, that requires adjudication in the suit, pertains to a right in rem and the same cannot be tried by an Arbitrator and for the proposition that when there are third parties who have nothing to do with the arbitration clause and the reliefs sought are not connected to such third parties, then the



cause of action cannot be split up or bifurcated.

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6.The learned counsel for the petitioners would further state that the Association of flat owners also filed a W.A.No.2146 of 2021 and the Division Bench, by order dated 04.07.2023, has held that the parties would have to resolve the disputes only in the appropriate forum. He would also rely on the recent decision of the Hon'ble Supreme Court in *Basheera Khanum Vs. The City Municipal Council and Another*, reported in 2025 INSC 955, where the Hon'ble Supreme Court held that a valid registered document, conveying immovable property cannot be annuled by any procedure, other than a civil suit.

7.Mr.S.Vasudevan, learned counsel also relied on the decision of the Bombay High Court in *M/s.Divya Enterprise and Others Vs. Capri Global Capital Limited* in I.A.(L).No.25700 of 2025 in C.S(L).No.23360 of 2025 dated 09.10.2025, where the Bombay High Court, relying on the ratio laid down by the Hon'ble Supreme Court in *Vidya Drolia and others Vs. Durga Trading Corporation*, reported in (2021) 2 SCC 1, has held that if the cause of action affects third party rights and requires centralized adjudication, such



dispute would be non-arbitrable.

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8.Per contra, Mr.Salai Varun, learned counsel appearing for the 1st respondent, Developer would submit that the trial Court has rightly allowed the application under Section 8 of the Act, finding that there was a valid arbitration agreement between the parties. He would further state that the argument of the learned counsel for the petitioners that the suit involves an adjudication of a right in rem is misplaced and it is only a right in personam, which the petitioners are attempting to expouse in the suit and therefore, the issue was certainly one that can be tried by the Arbitrator. In this regard, he relies on the decision of the Hon'ble Supreme Court in *Deccan Paper Mills Company Limited Vs. Regency Mahavir properties and others*, reported in (2021) 4 SCC 786 and *K.Mangayarkarasi and another Vs. N.J.Sundaresan and another*, reported in (2025) 8 SCC 299.

9.I have carefully considered the submission advanced by the learned counsel for the parties.

10.It is not in dispute that as between the petitioners, who are



purchasers of various apartments in the property developed by the 1st respondent, the Developer, there is a valid construction agreement which contains arbitration clauses between the respective petitioners and the 1st respondent.

11.It is the case of the petitioners in the suit that the gift deed executed by the 1st respondent in favour of the TANGEDCO is null and void, for the reason that the Developer was only a power agent of the original land owners and already 650 apartments have been sold, together with proportionate undivided share of land and the power agent was not competent to alienate any proportion of undivided share in favour of TANGEDCO, which directly prejudices and affects the settled rights of the purchasers, including the plaintiffs.

12.It is to be firstly noted that TANGEDCO is arrayed as a party in the suit and they have already filed their written statement. The arbitration clause is only between the petitioners and the 1st respondent, Developer. As held by the Hon'ble Supreme Court in *Booz Allen's case*, a mortgage suit is an action in rem and enforcement of a right in rem is not a mere suit for



money and therefore, it can only be decided by the Courts of law and not by Arbitral Tribunals. The Hon'ble Supreme Court further held that Section 8 of the Act cannot be interpreted in a manner, which would result in bifurcation of the cause of action in the suit between the parties, who are parties to the arbitration agreement and others.

13.This Court, in *M.Mythrai's case*, held that the Arbitral Tribunal cannot deal with the dispute, emanating from a transfer of property, without the purchaser being brought to the Arbitral Forum. This Court followed the decision of the Hon'ble Supreme Court in *Sukanya Holdings (P) Limited Vs. Jayesh H.Pandya*, reported in 2003 5 SCC 531.

14.In fact, the Hon'ble Supreme Court, in *Sukanya Holding's case*, held that when a suit is relating to a matter which lies outside the arbitration agreement and is also between some of the parties, who are not parties to the arbitration agreement, then there is no question of application of Section 8 of the Act. This view was upheld by the Apex Court in *Vidya Drolia's case*.

15.In fact, in W.A.No.2146 of 2021 pertaining to very same subject



matter, the Division Bench of this Court, by judgment dated 03.07.2024, held that property rights of the parties are involved and the parties would have to seek resolution of the issue only in the manner known to law.

16.Insofar as the decisions on which the learned counsel for the respondent has placed reliance, in *K.Mangayarkarasi's case*, the Hon'ble Supreme Court held that Courts have recognized the following categories, viz., (i) patent, trade marks and copyright; (ii) anti-trust/competition laws (iii) insolvency/winding up; (iv) bribery/corruption; (v) fraud; and (vi) criminal matters, excluded from arbitration and all other disputes would be capable of adjudication.

17.The list, at best, is illustrative in nature and cannot be said to be exhaustive, for the simple reason that in the decision in *Booz Allen's case*, the Hon'ble Supreme Court has already held that a suit based on mortgage would not be arbitrable. However, the list that is discussed by the Hon'ble Supreme Court in *K.Mangayarkarsis' case* does not include mortgage suits in the exclusion list. Therefore I do not find this decision helping the cause of the respondent.



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18. In *Deccan Paper Mill's case*, the Hon'ble Supreme Court held that cancellation of an instrument under Section 31 of the Act is between the parties to the action and their privies and not against all persons generally and therefore, it cannot be said to be a judgment in rem. However, the facts of the present case stand on a different footing. The Developer representing the original land owners has gifted a portion of the land in favour of TANGEDCO. No doubt, the transaction as between the parties is contractual in nature. However, the allegation of the petitioners is that their rights have been encroached upon by execution of such deed in favour of TANGEDCO and therefore, a challenge is laid to the settlement deed executed by the Developer in favour of TANGEDCO.

19. Further, admittedly, TANGEDCO is not a party to any of the arbitration agreements between the petitioners and the Developer, the 1st respondent. Therefore, applying the ratio laid down by the Hon'ble Supreme Court in *Sukanya Holding's case*, *Vidya Drolia's case* and followed by this Court in *M. Nythrai's case*, I am unable to affirm the findings arrived at by the trial Court referring the parties to arbitration.



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20. In fact, even in the recent decision of the Hon'ble Supreme Court in *Basheera Khanum's case*, the Hon'ble Supreme Court clearly held that annulment of a registered document conveying an immovable property can only be done through Civil Courts and not by any other procedure. Therefore, even applying the ratio laid down in this case, it was not proper on the part of the trial Court to have allowed the Section 8 application, directing the parties to go before the Arbitrator. For all the above reasons, I am inclined to set aside the order passed by the trial Court.

21. In fine, the Civil Revision Petition is allowed. The order in I.A.No.3 of 2023 in O.S.No.259 of 2021 dated 30.03.2024 on the file of the District Munsif, Chengalpet, is set aside. In view of the dismissal of I.A.No.3 of 2023 filed under Section 8 of Arbitration and Conciliation Act, 1996, the suit shall necessarily be restored. The suit shall be called before the District Munsif, Chengalpet on 26.11.2025. The learned District Munsif, Chengalpet, shall dispose of the suit on merits and in accordance with law, within a period of six (6) months thereafter. There shall be no order as to costs.



31.10.2025

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Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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To

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(TANGEDCO),
by its Chairman Mr.Rajesh Lakhani,
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P.B. BALAJI,J.

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Pre-delivery order made in
CRP.No.167 of 2025

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